IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 124 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

ASHABEN JAYANDRABHAI SHAH

Appearance:

MR AKIL QURESHI FOR MR MANISH R BHATT
for Applicant.
MR MJ SHAH FOR MR JP SHAH for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 17/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of the assessment year 1981-82 :-

"Whether, the Appellate Tribunal is right in law in holding that penalty was leviable on 'tax' only and tax did not include 'interest'?

2 We have heard Mr.Akil Qureshi, learned Counsel for the revenue and Mr.M.J.Shah for the respondent-assessee.

3 The assessee is an individual and was assessed to tax on total income of Rs.2,61,000/-. The assessment was completed on 23/2/1984 and as per the demand notice issued the amount payable by the assessee was determined at Rs.58,344/- which consisted of balance amount of tax remaining payable at Rs.7,296/- plus interest under section 139(8) Rs.2,836/- and interest under section 217 Rs.48,212/-. Since, the amount was not paid within 35 days the Income Tax Officer issued a show cause notice under section 211 of the Income Tax Act. As there was no compliance to the show cause notice, the Income Tax Officer levied penalty amoaunting to Rs.5,840/- which was equivalent to 10% of the amount not paid. The Commissioner of Income Tax (Appeals) passed an ex-parte order and confirmed the penalty so levied. The Appellate Tribunal held that penalty was leviable on 'tax' only and tax did not include 'interest'. The Tribunal therefore directed the Income Tax Officer to levy penalty only on outstanding 'tax'.

4 Mr.Akil Qureshi, learned Counsel for the revenue sought to refer to various provisions of Income Tax Act,1961 and contended that sub-section (1) of Section 221 contains limitation on total amount of tax as well as interest. He further submitted that tax in arrears includes not only tax but also interest payable by the assessee on the unpaid tax.

However, in view of the fact that the amount of penalty involved is very small, we decline to answer the question referred to us.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt